

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KAVIN MAURICE RHODES,
Plaintiff,
v.
SAM OHTA, et al.,
Defendants.

Case No. [16-cv-06805-PJH](#)

**ORDER REVOKING PLAINTIFF'S IN
FORMA PAUPERIS STATUS**

Plaintiff, a state prisoner, filed a pro se civil rights complaint under 42 U.S.C. § 1983 that was dismissed at screening. Plaintiff filed an appeal with the Ninth Circuit and the case has been referred back to this court for the limited purpose of determining whether plaintiff's in forma pauperis status should continue or whether the appeal is frivolous or taken in bad faith.

An indigent party who cannot afford the expense of pursuing an appeal may file a motion for leave to proceed in forma pauperis. Fed. R. App. P. 24(a); 28 U.S.C. § 1915(a)(1). Pursuant to Federal Rule of Appellate Procedure 24(a), "a party to a district-court action who desires to appeal in forma pauperis must file a motion in the district court." The party must attach an affidavit that (1) shows in detail "the party's inability to pay or give security for fees and costs," (2) "claims an entitlement to redress," and (3) "states the issues that the party intends to present on appeal." Fed. R. App. P. 24(a)(1). However, even if a party provides proof of indigence, "an appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). An appeal is in "good faith" where it seeks review of any issue that is "non-frivolous." *Hooker v. American Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002). An

1 issue is “frivolous” if it has “no arguable basis in fact or law.” See *O’Loughlin v. Doe*, 920
2 F.2d 614, 617 (9th Cir. 1990).

3 Plaintiff presented many allegations of mistreatment and violations of his rights by
4 correctional officers, prison officials, attorneys and judges at two prisons over the course
5 of several years. Plaintiff named approximately 58 defendants. He was informed that his
6 various complaints failed to comply with Fed. R. Civ. P. 8(a)(2) and that unrelated claims
7 against different defendants did not belong in the same action. Plaintiff was repeatedly
8 provided an opportunity to focus just on the events that occurred at the prison in this
9 district. He was told that unless his final amended complaint only discussed the claims
10 against the defendants in this district, the case would be dismissed. See *McHenry v.*
11 *Renne*, 84 F.3d 1172, 1179 (9th Cir. 1996). Plaintiff failed to follow the court’s
12 instructions and his third amended complaint also included new allegations against the
13 undersigned and court staff and plaintiff sought to recuse all federal judges in California.
14 The action was dismissed with prejudice as frivolous and malicious and for failure to
15 comply with Rule 8 and the court’s instructions. Plaintiff’s appeal is frivolous for these
16 same reasons. Therefore, plaintiff’s in forma pauperis status is **REVOKED**. The Clerk
17 shall forward this Order to the Ninth Circuit in case No. 17-16540.

18 **IT IS SO ORDERED.**

19 Dated: August 7, 2017



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22 PHYLLIS J. HAMILTON
United States District Judge

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on August 7, 2017, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Kavin Maurice Rhodes ID: D-20245
Pelican Bay State Prison
P.O. Box 7500
Crescent City, CA 95532-7000

Dated: August 7, 2017

Susan Y. Soong
Clerk, United States District Court



By: _____
Kelly Collins, Deputy Clerk to the
Honorable PHYLLIS J. HAMILTON